[redacted]

(28,012)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1920.

No 655.

FORBES PIONEER BOAT LINE, PLAINTIFF IN ERROR,

vs.

BOARD OF COMMISSIONERS OF EVERGLADES DRAINAGE DISTRICT.

IN ERROR TO THE SUPREME COURT OF THE STATE OF FLORIDA.

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., DECEMBER 27, 1920.

BE IT REMEMBERED, That on the 15th day of March, A. D., 1920, at a regular term of the Supreme Court of the State of Florida came the Plaintiff in Error Board of Commissioners of Everglades Drainage District, a Corporation, by counsel and filed in the Clerk's office of the Supreme Court of the State of Florida a transcript of the record of the proceedings and rulings and final judgment of the Circuit Court of Florida for Dade County in a certain cause wherein Forbes Pioneer Boat Line, a Corporation, was plaintiff and Board of Commissioners of Everglades Drainage District, a Corporation, was defendant and of the writ of error thereto from the judgment of the said Circuit Court therein rendered, which said transcript of the record of the cause aforesaid; and subsequent proceedings to final judgment and writ of error thereto, are in the words and figures as follows:

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TO

(ORIGINAL TYPEWRITTEN)

Transcript of Record

OF PROCEEDINGS IN THE CIRCUIT COURT OF DADE COUNTY, FLORIDA, IN THE SUIT OF FORBES PIONEER BOAT LINE, A CORPORATION, PLAINTIFF, VS. BOARD OF COMMISSIONERS OF EVERGLADES DRAINAGE DISTRICT, A CORPORATION, DEFENDANT, THEREIN LATELY PENDING.

Transcript of Record

of Proceedings

IN THE CIRCUIT COURT OF DADE COUNTY, FLORIDA,

IN THE SUIT OF

FORBES PIONEER BOAT LINE, a Corporation, Plaintiff,

vs.

BOARD OF COMMISSIONERS OF EVERGLADES DRAINAGE DISTRICT, A CORPORATION, DEFENDANT, THEREIN LATELY PENDING.

TRANSCRIPT OF RECORD
OF PROCEEDINGS

IN THE CIRCUIT COURT OF DADE COUNTY, FLORIDA.
IN THE SUIT OF

FORBES PIONEER BOAT LINE, A CORPORATION, PLAINTIFF,

VS.

BOARD OF COMMISSIONERS OF EVERGLADES DRAINAGE DISTRICT, A CORPORATION, DEFENDANT, THEREIN LATELY PENDING.

On the 2nd day of July, 1917, the plaintiff filed his præcipe for summons ad respondendum to defendant.

On the 3rd day of July, 1917, summons ad respondendum issued.

On the 11th day of July, 1917, service of summons was made on defendant.

On the 2nd day of July, 1917, plaintiff filed his declaration in the words and figures following:

IN THE CIRCUIT COURT, ELEVENTH JUDICIAL CIRCUIT, DADE COUNTY, FLORIDA.

Forbes Pioneer Boat Line, a Corporation, Plaintiff. vs. Board of Commissioners of Everglade Drainage District, a Corporation, Defendant.	DECLARATION

Forbes Pioneer Boat Line, a corporation, by its attorneys, sues the Board of Commissioners of Everglade Drainage District, a corporation, for that, on to-wit: August 1, 1913, the said plaintiff then and

there being a corporation, and as such was engaged in the business of transporting by boat passengers and freight from Fort Lauderdale, Florida, to Rita Island, and other places in said State, and from Rita Island and other places to Fort Lauderdale, Florida; that in the conduct of its said business it became and was necessary for the boats of plaintiff to pass over through and upon the waters of North New River Canal, which said canal, under and by virtue of an act of the Legislature of the State of Florida, approved June 6, 1913, was and is for certain purposes, under the supervision and control of the defendant; that said defendants and their predecessors have caused to be constructed across and upon said canal a certain lock in Broward County, Florida, within the Everglade Drainage District for the purpose, among other things, of controlling and regulating the flow of water through said canal; that on, to-wit, August 1, 1913, the said defendant, through its servants, agents and employees, wrongfully demanded of and received from the plaintiff the sum of $6.50 for toll for passage through the said lock of one of its boats, and has since that date, upon many and divers occasions, and up to the present time regularly made charges and collected tolls from the plaintiff upon each and every boat belonging to plaintiff which passed through said lock in the amount of ten cents per lineal foot and in the aggregate sum of $864; that said sum so collected, and each item thereof, was wrongfully and unlawfully levied and collected.

WHEREFORE plaintiff brings its suit and claims $1,250.00 damages.

CARSON, PINE & WILLARD,
THOS. B. NORFLEET,
Attorneys for Plaintiff.

(The following appears on back):

FILED
July 2, 1917.

BEN SHEPARD,
Clerk Circuit Court.

On the 18th day of July, 1917, defendant filed the following demurrer to the Declaration in the words and figures following:

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR DADE COUNTY, STATE OF FLORIDA.

Forbes Pioneer Boat Line,
a Corporation,
Plaintiff.

vs.

Board of Commissioners of
Everglades Drainage District,
a Corporation,
Defendant.

DEMURRER OF THE DEFENDANT TO THE DECLARATION OF THE PLAINTIFF.

Now comes the defendant and demurs to the declaration filed by the plaintiff in said cause. and for cause of demurrer says:

1. That it does not appear from the averments of said declaration that the toll charges for the use of said canal by said plaintiff is unlawful or unauthorized.

2. That said canal was constructed primarily for the purpose of draining the lands through which it runs and making it habitable and fit for use, and said canal is maintained by a tax or assessment on such lands imposed for this purpose, as appears from the statute referred to in said declaration; that the use of said canal for navigation is incidental and subject to regulation by said defendant; that said plaintiff has no right to its free use and enpjoyment for commercial purposes.

3. That said canal is one of the system of drainage canals constructed for the drainage and reclamation of the lands in the Everglades of Florida; that all of said canals, including the one here referred to, were cut and are maintained from funds derived from a tax or assessment imposed upon the lands so reclaimed and benefitted; that said canals were not cut for the purpose of navigation and the use of said canal by plaintiff and others for the purpose of navigation tends to and does damage and injure it by wearing away the shores and causing it to shoal and become shallow so that the volume of water that may be carried by it is diminished and its value for the purpose of drainage thereby lessened, and said plaintiff and others in

like situation have no right to demand that they have the free use of said canal for the maintenance of which they contribute nothing.

4. That said canal was constructed for the purpose of drainage and the use of said canal by the general public for the purpose of navigation interferes with its utility and value for the purpose of drainage, and the defendant, which is the governing board of the drainage district in which said canal is located, has the power and authority to regulate its use to the end that it may serve the purpose for which it was constructed and accomplish the object, as a part of the system of the drainage of the Everglades; that it was designed to accomplish.

5. That said toll charge is made at a lock on said canal, which lock is maintained at large expense by the drainage district in which said canal is located, for the purpose of facilitating the use of said canal for the purpose of drainage, and the defendant says that it is equitable and proper that those who enjoy the use of said canal, which is an artificial and not a natural stream, for commercial purposes, should contribute, by way of reasonable toll charges, to the maintenance and care of said lock.

T. F. WEST,
Attorney-General of Florida,
GLENN TERRELL,
Special Counsel for I. I. Board.

Tallahassee, Florida,
July 16, 1917.

STATE OF FLORIDA,
ss.
COUNTY OF LEON.

I, Glenn Terrell, attorney for the defendant in above entitled cause, do hereby certify that in my opinion the foregoing demurrer is well founded in law, and do make oath that it is not filed for the purpose of delay only.

GLENN TERRELL.

Sworn to and subscribed before me this 16th day of July, A. D., 1917.

MARY HERRING,
Notary Public, State of Florida,
My commission expires February 12, 1921.

(N. P. SEAL)

(The following appears on back):

FILED
July 18, 1917.
BEN SHEPARD,
Clerk Circuit Court.

On the 12th day of September, 1919, the Court made the following ruling upon said demurrer, in the words and figures following:

IN THE CIRCUIT COURT, DADE COUNTY, FLORIDA.

Forbes Pioneer Boat Line, a Corporation, Plaintiff, vs. Board of Commissioners of Everglades Drainage District, a Corporation, Defendant.	ORDER

This cause coming on to be heard upon motion of the plaintiff that the demurrer to the declaration herein be overruled, and it appearing to the Court that this case was reversed by the Supreme Court of the State of Florida, and that in and by its mandate dated July 2, 1919, the judgment of this Court in said case was reversed and this case was remanded to this Court, with instructions to over-rule the demurrer to the declaration and for such further proceedings as are not mendacious with the rulings of the Supreme Court, and the Court being fully advised in the premises.

IT IS HEREBY ORDERED AND ADJUDGED that the demurrer to the declaration be and the same is hereby overruled and that the defendant have until the Rule Day in October, 1919, to file pleas to the said declaration.

DONE AND ORDERED IN CHAMBERS at Miami, Florida, this 12th day of September, A. D., 1919.

H. PIERRE BRANNING,
Judge.

(The following appears on back):

Filed this 12th day of September, A. D., 1919, and recorded in Circuit Court Minutes, No. 15, on Page 459.

BEN SHEPARD,
Clerk Circuit Court.

By H. F. M'CLUNEY,
Deputy.

On the 16th day of October, 1919, defendant filed the following motion to dismiss:

IN THE CIRCUIT COURT IN AND FOR DADE COUNTY, FLORIDA.

Forbes iPoneer Boat Line, a Corporation, Plaintiff, vs. Board of Commissioners of Everglades Drainage District, a Corporation, Defendant,	ACTION AT LAW

MOTION TO DISMISS.

Comes the defendant by its attorney, Glenn Terrell, and moves the Court to dismiss the above styled cause for the following reasons:

1. This is a suit to all intents and purposes against the State of Florida, and cannot be maintained.

2. The Everglades Drainage District, Defendant herein, is an important political sub-division of this State and cannot be sued in an action of this kind without legislative authority therefor.

3. There is no law in this State authorizing suits of this character against the State of Florida or any of its political sub-divisions.

GLENN TERRELL,
Attorney for Defendant.

STATE OF FLORIDA, |
ss.
COUNTY OF LEON, |

Before me, the nndersigned authority, personally appeared Glenn Terrell, who, on oath, says that he is attorney for the Defendant, the Board of Commissioners of Everglades Drainage District in tne above styled cause, and that the foregoing Motion to Dismiss was interposed in good faith and not for the purposes of delay and for the reasons therein expressed.

GLENN TERRELL.

Sworn to and subscribed before me this 3rd day of October, A. D., 1919.

MARY HERRING,
Notary Public, State of Florida at Large.
My commission expires February 12, 1921.

(N. P. SEAL)

(The following appears on back):

FILED
October 16, 1919.

BEN SHEPARD,
Clerk Circuit Court.

On the 16th day of October, 1919, defendant filed the following Plea:

IN THE CIRCUIT COURT IN AND FOR DADE COUNTY, FLORIDA.

Forbes Pioneer Boat Line, a Corporation, Plaintiff,	
vs.	ACTION AT LAW
Board of Commissioners of Everglades Drainage District, a Corporation, Defendant.	

PLEA.

Comes the defendant by its attorney, Glenn Terrell, and for plea to the declaration herein filed says that the Legislature of the State of Florida at its session in 1919 duly enacted Chapter 7865, of the Laws of Florida, which, in effect, enlarged the powers of the Board of Commissioners of Everglades Drainage District, Defendant herein to the extent of authorizing the promulgation of and collection of a reasonable schedule of tolls for the use of all the canals and locks within the Everglades Drainage District of Florida, the said canals and locks being the identical canals and locks over which the plaintiff paid the tolls as referred to in its declaration herein; that the said Chapter 7865 of the Laws of Florida legalized and validated all tolls heretofore collected on the canals and locks as herein referred to by the Board of Commissioners of Everglades Drainage District, the said tolls heretofore collected being the identical tolls that are herein sought to be recovered that the said Chapter 7865, of the Laws of Florida, was passed by the Legislature thereof and was signed by the Governor and became effective and a binding law of this State on the 9th day of June, A. D., 1919; that by virtue thereof the defendant herein was given full power and authority to do and perform all the acts herein complained of and that this suit cannot therefore be longer maintained.

GLENN TERRELL,
Attorney for Defendant.

STATE OF FLORIDA,
COUNTY OF LEON. } ss.

Before me, the undersigned authority, personally appeared Glenn Terrell, who, on oath, says that he is attorney for the Defendant, the Board of Commissioners of Everglades Drainage District in the above styled cause, and that the foregoing plea was interposed in good faith and not for the purposes of delay and for the reasons therein expressed.

GLENN TERRELL,

Sworn to and subscribed before me this 3rd day of October, A. D., 1919.

MARY HERRING,
Notary Public, State of Florida at Large,
My commission expires February 12, 1921.

(N. P. SEAL)

(The following appears on back):

FILED
October 16, 1919.
BEN SHEPARD,
Clerk Circuit Court.

On the 14th day of October, 1919, plaintiff filed the following demurrer to defendant's Plea:

IN THE CIRCUIT COURT, DADE COUNTY, FLORIDA.

Forbes Pioneer Boat Line, a Corporation, Plaintiff,	
vs.	ACTION AT LAW
Board of Commissioners of Everglades Drainage District, a Corporation, Defendant.	

DEMURRER TO PLEA

Now comes the plaintiff, by its attorneys, and says that the plea of the defendant is bad in substance, and assigns as matter of law to be argued:

1. That that portion, or portions, of Chapter 7865 of the Laws of Florida attempting to legalize and validate all tolls collected on the canals and locks, therein referred to, by the Board of Commissioners of Everglades Drainage District prior to the approval of said Act, is or are unconstitutional.

2. That that portion, or portions, of Chapter 7865 of the Laws

of Florida attempting to legalize and validate all tolls collected on the canals and locks, therein referred to, by the Board of Commissioners of Everglades Drainage District, prior to the approval of said Act, is or are in violation of Section 17 of the Bill of Rights of the Constitution of the State of Florida.

3. That that portion, or portions, of Chapter 7865 of the Laws of Florida, attempting to legalize and validate all tolls collected on the canals and locks, therein referred to, by the Board of Commissioners of Everglades Drainage District, prior to the approval of said Act, is or are in violation of Article 1, Section 10 of the Constitution of the United States of America.

4. That that portion, or portions, of Chapter 7865 of the Laws of Florida, attempting to legalize and validate all tolls collected on the canals and locks, therein referred to, by the Board of Commissioners of Everglades Drainage District, prior to the approval of said Act, is or are in violation of Section 13 of the Bill of Rights of the Constitution of the State of Florida.

5. That that portion, or portions, of Chapter 7865 of the Laws of Florida, attempting to legalize and validate all tolls collected on the canals and locks, therein referred to, by the Board of Commissioners of Everglades Drainage District, prior to the approval of said Act, is or are in violation of Section 1, Article 14 of the Constitution of the United States of America.

6. That Chapter 7865 of the Laws of Florida is in violation to the Constitution of the State of Florida.

7. That Chapter 7865 of the Laws of Florida, is in violation to the Constitution of the United States of America.

8. That Chapter 7865 of the Laws of Florida, is in violation to Section 16 of Article 3 of the Constitution of the State of Florida.

CARSON, WILLARD & KNIGHT,
Attorneys for Plaintiff.

I, Ben C. Willard, one of the attorneys for the Plaintiff in the above styled cause, do hereby certify that in my opinion, the foregoing demurrer is well founded in points of law.

BEN C. WILLARD.

STATE OF FLORIDA, | ss.
COUNTY OF DADE. |

On this day personally appeared before me Floyd L. Knight, to me well known, who being duly sworn, says: that he is one of the attorneys for the plaintiff in the above styled cause; and that the foregoing demurrer is not interposed for purposes of delay.

FLOYD L. KNIGHT.

Sworn to and subscribed before me this October 13th, 1919.

A. A. CHAMBERS,
Notary Public, State of Florida at Large,
My commission expires, December 4, 1920.

(N. P. SEAL)

(The following appears on back):

F I L E D
October 14, 1919.
BEN SHEPARD,
Clerk Circut Court.
By GEORGE F. HOLLY,
Deputy Clerk.

On the 10th day of December, 1919, the Court made the following ruling upon the Defendants' motion to dismiss and the Plaintiff's Demurrer to Defendant's Plea:

IN THE CIRCUIT COURT, DADE COUNTY, FLORIDA.

Forbes Pioneer Boat Line,
a Corporation,
Plaintiff,
vs.
Board of Commissioners of
Everglades Drainage District,
a Corporation,
Defendant. | ORDER

This cause coming on to be heard upon defendant's motion to dismiss the above entitled cause and upon plaintiff's demurrer to the defendant's plea hereinbefore filed in the above entitled cause, and counsel for plaintiff and defendant respectively having submitted the same to the court upon written briefs, and the court being advised in the premises.

IT IS THEREUPON ORDERED AND ADJUDGED that the defendant's motion to dismiss be and the same is hereby denied.

IT IS FURTHER ORDERED AND ADJUDGED that the plaintiff's demurrer to the defendant's plea be and the same is hereby sustained, and that the defendant be allowed until the rule day in January, 1920, to file such additional pleas as he may be advised.

DONE AND ORDERED in Chambers, at Miami, Florida, this 10th day of December, 1919.

H. PIERRE BRANNING,
Judge.

(The following appears on back):

Filed this 10th day of December, A. D., 1919, and recorded in Circuit Court Minutes 16, on Page 85.

BEN SHEPARD,
Clerk Circuit Court.
By H. F. M'CLUNEY,
Deputy.

On the 19th day of January, 1920, the following stipulation was filed:

IN THE CIRCUIT COURT, ELEVENTH JUDICIAL CIRCUIT, DADE COUNTY, FLORIDA.

Forbes Pioneer Boat Line, a Corporation, Plaintiff, vs. Board of Commissioners of Everglades Drainage District, a Corporation, Defendant.	STIPULATION

It is stipulated and agreed by and between the attorneys for the plaintiff and the attorneys for the defendant herein, that, between August 1, 1913, and July 1, 1916, the plaintiff paid to the defendant at divers times and in divers amounts the sum of Six Hundred and Forty-nine Dollars and Twenty-one Cents ($649.21) for tolls for the passage of its boats through the North New River Canal in Broward County, Florida.

CARSON, WILLARD & KNIGHT,
THOS. B. NORFLEET,
Attorneys for Plaintiff.

GLENN TERRELL,
Attorney for Defendant.

(The following apepars on back):

FILED
January 19, 1920.

BEN SHEPARD,
Clerk Circuit Court.

By GEORGE F. HOLLY,
Deputy Clerk.

On the 19th day of January, 1920, the following judgment was entered by the court.

IN THE CIRCUIT COURT, DADE COUNTY, FLORIDA.

Forbes Pioneer Boat Line, a Corporation, Plaintiff, vs. Board of Commissioners of Everglades Drainage District, a Corporation, Defendant.	FINAL JUDGMENT

This cause coming on to be heard upon the application of the

plaintiff for the entry of a final judgment here, and it appearing to the court that demurrers have been sustained to all of the pleas of the defendant; and it further appearing to the court that the defendant declines to plea further; and it further appearing to the court from a stipulation entered into between the parties hereto and filed in this court that between August 1, 1913, and July 1, 1916, the plaintiff paid to the defendant at divers times and in divers amounts the sum of Six Hundred and Forty-nine Dollars and Twenty-one Cents for tolls for the passage of its boats through the North New River Canal in Broward County, Florida.

IT IS THEREUPON CONSIDERED by the court that the plaintiff, Forbes Pioneer Boat Line, a corporation, do have and recover of and from Board of Commissioners of Everglades Drainage District, a corporation, defendant, the sum of Six Hundred and Forty-nine Dollars and Twenty-one Cents ($649.21) principal, and One Hundred and Eighty-four Dollars and Forty-nine Cents ($184.49) interest from July 1, 1916, and costs herein, hereby taxed at Seventeen and 35-100 Dollars. ($17.35).

DONE AND ORDERED in Miami, Florida, this 19th day of January, 1920.

H. PIERRE BRANNING,
Judge.

(The following appears on back):

Filed this 19th day of January, A. D., 1920, and recorded in Circuit Court Minutes, No. 16, on Page 120.

BEN SHEPARD,
Clerk Circuit Court.

By H. F. McCLUNEY,
Deputy.

On the 13th day of February, 1920, the defendant filed its praecipe

with the Clerk of the Circuit Court for Dade County, for Writ of Error, in the words and figures following:

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR DADE COUNTY.

Forbes Pioneer Boat Line, a Corporation, Plaintiff, vs. Board of Commissioners of Everglades Drainage District, a Corporation, Defendant.	PRAECIPE FOR WRIT OF ERROR

The Clerk of the above styled court will please issue Writ of Error in this said cause returnable to the Supreme Court of the State of Florida on the 15th day of March, A. D., 1920.

GLENN TERRELL,
Attorney for Defendant.

On the 13th day of February, 1920, Writ of Error issued which was duly recorded in the Minutes of the Circuit Court in Book 16, Page 144, on the 13th day of February, 1920.

The record of said Writ of Error is in the words and figures following, to-wit:

WRIT OF ERROR

ss.

STATE OF FLORIDA.

THE STATE OF FLORIDA TO THE JUDGE OF THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT OF THE STATE OF FLORIDA. GREETING:

Because in the record and proceedings and also in the rendition of judgment in a certain cause which is in our said Circuit Court before you, between Forbes Pioneer Boat Line, a corporation, as

Plaintiff and Board of Commissioners of Everglades Drainage District, a Corporation, as Defendant, manifest error hath happened, as it is said, to the great damage of the said Board of Commissioners of Everglades Drainage District, a corporation, as by its complaint appears.

We, willing that the error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you that, if judgment be therein rendered, you distinctly and openly send the record and proceedings aforesaid, with all things touching them under your seal, together with this writ, to our Supreme Court of the State of Florida, so that you have the same at Tallahassee on the 15th day of March, A. D.. 1920, in our said Supreme Court to be then and there held, that inspecting the record and proceedings aforesaid, our said Supreme Court may cause further to be done therein, to correct that error, what of right and according to law should be done.

Witness the Honorable Jefferson B. Browne, Chief Justice of the said Supreme Court, and the Seal of the said Circuit Court, this 13th day of February, in the year of our Lord one thousand, nine hundred and twenty.

BEN SHEPARD,
Clerk Circuit Court of Dade County.

(CT. CT. SEAL)

(Endorsed on back as follows).

Filed this 13th day of February, A. D., 1920, and recorded in Circuit Court Minutes, No. 16, on Page 144.

BEN SHEPARD,
Clerk Circuit Court.

By H. F. M'CLUNEY,
Deputy.

On the 13th day of February, 1920, defendant filed its Assignments of Error in words and figures following:

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR DADE COUNTY.

Forbes Pioneer Boat Line,
a Corporation,
Plaintiff,

vs.

Board of Commissioners of
Everglades Drainage District,
a Corporation,
Defendant.

ASSIGNMENTS OF ERROR

Comes now the Board of Commissioners of Everglades Drainage District, a corporation, defendant in the above styled cause and files the following assignments of error therein:

1. The court erred in denying Motion to Dismiss on part of the defendant.

2. The court erred in sustaining Demurrer of the Plaintiff to the Defendant's Plea to the Declaration.

3. The court erred in entering Final Judgment against the Board of Commissioners of Everglades Drainage District in favor of Forbes Pioneer Boat Line, Plaintiff herein, for the sum of Six Hundred and Forty-nine Dollars and Twenty-one Cents principal, One Hundred and Eighty-four Dollars and Forty-nine Cents interest, and Seventeen Dollars and Thirty-five cents costs, on the 19th day of January, 1920.

GLENN TERRELL,
Attorney for Defendant.

Received a copy of the foregoing Assignments of Error and service thereof accepted this 13th day of February, A. D., 1920.

CARSON, WILLARD & KNIGHT,
Attorneys for Plaintiff.

On the 13th day of February, 1920, defendant filed written directions to the Clerk for Preparing the Transcript as follows:

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR DADE COUNTY.

Forbes Pioneer Boat Line,
a Corporation,
Plaintiff,
vs.
Board of Commissioners of
Everglades Drainage District,
a Corporation,
Defendant.

DIRECTIONS TO CLERK FOR PREPARING TRANSCRIPT OF RECORD

The Clerk of this court will please prepare a Transcript of the Record in the above styled cause, beginning on Monday, the 1st day of March, A. D., 1920.

1. Recite the issuance of Process and Service thereof.

2. Copy the Declaration in full filed July 2, 1917.

3. Copy of Demurrer of Defendant to Declaration filed July 18, 1917.

4. Copy of Order overruling Demurrer dated September 12, 1919.

5. Copy of Defendant's Motion to Dismiss.

6. Copy of Defendant's Plea.

7. Copy of Demurrer of Plaintiff to Defendant's Plea.

8. Copy of the Order of the Court dated December 10, 1919, denying Defendant's Motion to Dismiss and Sustaining Plaintiff's Demurrer to Defendant's Plea.

9. Copy of Stipulation signed by attorneys for Plaintiff and Defendant.

10. Copy of Final Judgment dated January 19, 1920.

11. Copy of Praecipe for Writ of Error.

12. Copy of Assignments of Error filed by Defendant.

13. Copy in full these Directions to the Clerk for Preparing the Transcript.

14. Please omit all other records not herein specifically enumerated and give the date of the filing of each and every paper recited or copied.

GLENN TERRELL,
Attorney for Defendant.

RECEIVED A copy of the foregoing directions to the Clerk and Service thereof accepted this 13th day of February, A. D., 1920.

CARSON, WILLARD & KNIGHT,
Attorneys for Plaintiff.

On the 13th day of February, 1920, Plaintiff filed Additional Directions to Clerk for Preparing Transcript as follows:

IN THE CIRCUIT COURT, DADE COUNTY, FLORIDA.

Forbes Pioneer Boat Line, a Corporation, Plaintiff, vs. Board of Commissioners of Everglades Drainage District, a Corporation, Defendant.	ADDITIONAL DIRECTIONS TO CLERK FOR PREPARING TRANSCRIPT

The Clerk of the said court will please insert in the Transcript of Record in the above styled cause in addition to the records directed to be inserted in said transcript by the defendant:

1. Copy Writ of Error in full.

2. Copy in full these directions to the Clerk.

3. You will please give the date of filing of each of the above papers copied, and recite the book and page number of your records in which the Writ of Error is recorded.

CARSON, WILLARD & KNIGHT,
Attorneys for Plaintiff.

Received a copy of the foregoing directions to the Clerk and service accepted this 13th day of February, A. D., 1920.

GLENN TERRELL,
Attorney for Defendant.

I, BEN SHEPARD, Clerk of the Circuit Court in and for the County of Dade, State of Florida, do hereby certify that the foregoing pages numbered from 1 to 24, inclusive, contain a correct transcript of the

record of the judgment in the case of Forbes Pioneer Boat Line, a corporation, plaintiff, against, Board of Commissioners of Everglades Drainage District, a Corporation, defendant, and a true and correct recital and copy of all such papers and proceedings in said cause, as appears upon the records and files in my office, that have been directed to be included in said transcript by the written demands of the said parties.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Circuit Court, this 8th day of March, 1920.

BEN SHEPARD,
Clerk Circuit Court, Dade County, Florida.

(SEAL)

AND THEREAFTER, to-wit: on the 23rd day of March, A. D., 1920, the said cause was submitted to the said Supreme Court of Florida upon briefs for the respective parties.

And thereafter, to-wit: on the 10th day of July, A. D., 1920, the said Supreme Court of Florida did render and file its opinion and enter its judgment in the above styled cause; the said opinion being in the words and figures following, to-wit:

IN THE SUPREME COURT OF FLORIDA,
JANUARY TERM, A. D., 1920.

Board of Commissioners of Everglades Drainage District, a Corporation, Plaintiff in Error. vs. Forbes Pioneer Boat Line, a Corporation, Defendant in Error.	DADE COUNTY

REAVES, Circuit Judge.

The defendant in error, which we shall herein call the Boat Line for brevity, sued the plaintiff in error, which we shall call the Board, in the Circuit Court of Dade County to recover stated sums of money paid by the Boat Line to the Board as toll for the passage of its boats through the locks maintained by the Board in one of the canals constituting the Everglades Drainage System. The declaration filed July

2, 1917, seeks to recover payments from August 1, 1913. Omitting the style of the court and cause, the declaration is as follows:

"Forbes Pioneer Boat Line, a corporation, by its attorneys, sues the Board of Commissioners of Everglades Drainage District, a corporation, for that, on to-wit: August 1, 1913, the said plaintiff then and there being a corporation, and as such was engaged in the business of transporting by boat passengers and freight from Fort Lauderdale, Florida, to Rita Island, and other places in said State, and from Rita Island and other places to Fort Lauderdale, Florida; that in the conduct of its said business it became and was necessary for the boats of plaintiff to pass over through and upon the waters of North New River Canal, which said canal, under and by virtue of an act of the Legislature of the State of Florida, approved June 6, 1913, was and is for certain purposes, under the supervision and control of the defendant; that said defendants and their predecessor have caused to be constructed across and upon said canal a certain lock in Broward County, Florida, within the Everglades Drainage District for the purpose, among other things, of controlling and regulating the flow of water through said canal; that on, to-wit: August 1, 1913, the said defendant, through its servants, agents and employees, wrongfully demanded of and received from the plaintiff the sum of $6.50 for toll for passage through the said lock of one of its boats, and has since that date, upon many divers occasions, and up to the present time regularly made charges and collected tolls from the plaintiff upon each and every boat belonging to plaintiff which passed through said lock in the amount of ten cents per lineal foot and in the aggregate sum of $864.00; that said sum so collected, and each item thereof, was wrongfully and unlawfully levied and collected. Wherefore plaintiff brings its suit and claims $1,250 damages."

A demurrer to this declaration was sustained, and from the final judgment in favor of the Board a writ of error was taken by the Boat Line t othis court, and the judgment reversed on May 30, 1919. See Forbes Pioneer Boat Line vs. Board of Commissioners of Everglades Drainage District, Fla., 82 South, Rep. 346.

An examination of this opinion will disclose that the judgment was reversed for the reason that the Board had no power under the law to collect toll for the passage of boats through the canals and locks constituting said system of drainage. On the same day upon which this opinion was handed down the Legislature enacted into law Chapter

7865, Acts of 1919, amending Section 3 of Chapter 6456, Acts of 1913, and by said amendment expressly authorized said Board to "provide for and regulate the collection of a reasonable schedule of tolls for the use of the said canals and locks," and further providing that "all tolls heretofore collected for the use thereof being by this act legalized and validated." The further provisions of the amendment not necessary to be quoted show more fully the intent of the Legislature that the canals might be used for the purpose of commerce, and that the Board might prescribe suitable regulations governing such use.

After the mandate was handed down the Circuit Court overruled the demurrer in obedience to the mandate of this court, and the defendant then filed a plea setting up the passage of said Chapter 7865, by virtue of which it was claimed that the said charges of toll had been validated and that the suit could no longer be maintained. A demurrer to this plea was sustained. Thereupon a judgment was entered in favor of the plaintiff for $649.21, principal and $184.49 interest, and $17.37 cost, it having been agreed between counsel for the respective parties that the said sum of $649.21 had been paid, as claimed in the declaration. On this judgment the Board sued out a writ of error to this court.

The demurrer to the plea above mentioned raises the question of the constitutionality of that portion of Chapter 7865 which undertook to validate the charge and collection of the tolls in question.

The Act is attacked (a) as being an ex post facto law; (b) as impairing the obligation of a contract; and (c) as depriving the plaintiff of property without due process of law; and the various sections of the State and Federal Constitutions guaranteeing these rights are invoked, namely, Section 17, Bill of Rights; Section 12, Bill of Rights; Section 10, Article 1, U. S. Constitution; and 14th Amendment U. S. Constitution.

It is well to keep in mind that our State Constitution is a limitation upon power, and unless legislation duly passed be clearly contrary to some expressed or implied prohibition in the Constitution, the courts have no authority to pronounce it invalid. Lainhart vs. Catts, 73 Florida, 735, 75 South. Rep. 47.

We might add also that the Federal Constitution is a limitation upon the powers of the States, because "the powers not delegated to the United States by the Constitution, nor prohibited by it to the States,

are reserved to the States respectively, or to the people." Article 10, U. S. Constitution.

The inquiry then is whether or not the validation of the Act of said Board in exacting and receiving the tolls in question is prohibited by the State or Federal Constitution, and the well settled rule is that the burden of showing beyond a reasonable doubt that the Act assailed is in conflict with some designated provision of the State or Federal Constitution rests upon the party assailing the Act. Lainhart vs. Catts, **supra.**

Turning now to the various provisions of the organic law invoked by the Boat Line, let us determine their meaning, and application to the matter in issue.

(a) It is settled by the authorities that the prohibition against **ex post facto** laws is confined to laws respecting criminal punishment and has no relation to retrospective legislation of any other character. Johannessen vs. United States, 225 U. S. 227, 56 L. Ed. 1066, 32 Sup. Ct. Rep. 613; Cooley's Const. Lim. (7th Ed.) 373; 12 C. J. Sec. 805. p. 1099.

(b) It is also settled that constitutional provisions against impairing the obligation of a contract do not apply to obligations imposed by the law without the assent of the party bound, even though by a legal fiction they may be enforced in an action in form **ex contractu.** In other words, the class of contracts protected are voluntary —that is, based on the assent of the parties, expressly or impliedly given. That class of obligations aptly styled "quasi contract" are not embraced within the constitutional guarantee against the passage of a law violating the obligation of a contract. Louisiana **ex rel.** Folsom vs. Mayor, etc. of City of New Orleans, 109 U. S. 285, 27 L. Ed. 946, 3 Sup. Ct. Rep. 211; State vs. City of New Orleans, 38 La. Ann. 119, 58 Am. Rep. 168; Freeland vs. Williams, 131 U. S. 405, 33 L. Ed. 193, 9 Sup. Ct. Rep. 763; Mexican Nat. Ry. Co. vs. Mussette, 86 Tex. 708, 26 S. W. Rep. 1075, 24 L. R. A. 642; 12 C. J., p. 1053, Secs. 690, 691; 6 R. C. L., p. 326, Sec. 316.

(c) We now come to consider the question of whether the validating act under consideration deprives the Boat Line of property without due process of law. It should be kept in mind that neither the Federal Constitution nor the Constitution of Florida in terms forbids the passage of retroactive or retrospective laws, and such laws are therefore valid unless they violate some constitutional guarantee;

or, in other words, unless invalid for some reason other than because of their retroactive nature. Cooley's Const. Lim. (7th Ed.) 529; 12 C. J., p. 1084, Sec. 779; Kentucky Union Co. vs. Commonwealth of Kentucky, 219 U. S. 140, 55 L. Ed. 137, 31 Sup. Ct. Rep. 171.

In the instant case it is insisted that the Boat Line had a vested right of action against the Board to recover back the tolls paid, of which it could not be constitutionally deprived. It is true that generally speaking vested rights are protected by the due process of law clause of the State and Federal Constitutions. Cooley's Const. Lim. 517, **et seq.**; 12 C. J. p. 956, Sec. 486. The difficulty often comes, however, in determining what is a vested right in the sense secured by the constitutional guarantee. No useful purpose would be accomplished by attempting a general definition, nor by quoting general definitions as given by the authorities. For a lengthy and enlightening discussion see Cooley's Const. Lim. (7th Ed.) 508, **et seq.** From this author we quote briefly as follows: "The chief restriction upon, this class of legislation is that vested rights must not be disturbed, but in its application as a shield or protection the term 'vested rights' is not used in any narrow or techical sense or as importing a power of legal control merely, but rather as implying a vested interest which it is right and equitable that the government should recognize and protect and of which the individual could not be deprived arbitrarily without injustice." For other definition see 12 C. J. p. 955, Sec. 485; 6 R. C. L., p. 308, Sec. 294.

In all the definitions and text books, as well as the adjudicated cases, the moral aspect of the right claimed is given consideration in determining whether the right is protected or not, and the rule generally announced is that if the claim is not morally right it may be taken away by legislation retrospective in its nature. For instance, defects in deeds or in the acknowledgement of deeds which it would be unjust for one to take advantage of may be cured. Downs vs. Blount, 95 C. C. A. 289, 170 Fed. Rep. 15, 31 L. R. A. (N. S.) 1076, and cases cited in note.

Also, moral obligations of counties and municipalities have frequently been made binding by retrospective laws. Utter vs. Franklin, 172 U. S. 416, 43 L. Ed. 498, 19 Sup. Ct. Rep. 183; Jefferson City Gas-Light Co. vs. Clark, 95 U. S. 644, 24 L. Ed. 521.

As stated by the Supreme Court of Massachusetts, a party can not have a vested right to do wrong. Foster vs. Essex Bank, 16 Mass.

244. And by the Supreme Court of New Jersey, "Laws curing defects which would otherwise operate to frustrate what must be presumed to be the desire of the party effected cannot be considered as taking away vested rights. Courts do not regard rights as vested contrary to the justice and equity of the case." State vs. Newark, 27 N. J. L. 185. See also 6 R. C. L. page 311, Sec. 298, from which we quote: "It is axiomatic that no man has a vested right to do wrong. This principle may be applied in some instances in order to test the validity of retroactive legislation."

Cooley's Const. Lim. (7th Ed.) on page 533, quotes from Beach vs. Walker, 6 Conn. 190. as follows: "The law undoubtedly is retrospective, but is it unjust? All the charges of the officer on the execution in question are perfectly reasonable and for necessary services in the performance of his duty; of consequence they are eminently just, and so is the act confirming the levy. A law, although it be retrospective, if comformable to entire justice, this court has repeatedly decided is to be recognized and enforced."

Again, from the same author on page 535 we quote: "On the same principle legislative acts validating invalid contracts have been sustained. When these acts go no further than to bind a party by a contract which he has attempted to enter into, but which was invalid by reason of some personal inability to make it, or through neglect of some legal formality, or in consequence of some ingredient in the contract forbidden by law, the question which they suggest is one of policy and not of constitutional power."

Again, the same author on page 536 quotes from the case of Goshen vs. Stonington, 4 Conn. 209, 10 Am. Dec. 121, as follows: "That where a statute is expressly retroactive and the object and effect of it is to correct an innocent mistake, remedy a mischief, execute the intention of the parties and promote justice. then both as a matter of right and of public policy affecting the peace and welfare of the community the law should be sustained."

These authorities abundantly justify us in looking to the facts of the case at bar and determining whether the act in question is morally right as an aid to solving the question of whether it violates a constitutional guarantee. Before doing so, however, we might call attention to the fact that not all of the authorities agree that vested rights are always protected by the guarantee in question, but some instead of trying to determine what is a vested right, lay down the rule that rights

vest subject to the equity against them and may be divested under proper circumstances. Two Kents Com. p. 415; Grim. vs. Weissenberg S. D. 57 Pa. St. 433, 98 Am. Dec. 237.

In this case it is said that "it would be a nice and difficult task to trace accurately the boundary line between the domain of authorized and prohibited legislation on this subject;" but the court had no difficulty in sustaining an act which validated an unauthorized levy and collection of taxes for school purposes. Both lines of reasoning reach the same result.

Turning now to the facts of the case at bar, the court takes judicial knowledge of the various laws enacted for the drainage of the Everglades, and also that a system of canals of great size and depth has been constructed. That such canals are suitable for navigation as well as adapted to drainage is apparent from the fact that plaintiff is suing for the recovery of tolls paid for the passage of its boats through the locks, and also from the fact that the Legislature of 1919 recognized the value of such canals for transportation and authorized the Board to regulate such transportation and charge toll.

For three years, according to the declaration, the plaintiff's boats operated on one of these canals, passing through the locks constructed, maintained, and operated by the defendant. That locks of the magnitude of which these must of necessity be are not constructed, maintained, or operated without cost, goes without saying. The plaintiff's contribution to this cost was the toll which it paid and for which it received value, both in facilities for transportation and in service by the operation of the locks. It engaged in commerce upon the waters in question as a business enterprise, and from the fact that, the business was continued for three years, as shown by the declaration, and is doubtless still continuing, we may assume that the enterprise proved profitable. Moreover, it doubtless voluntarily paid the toll charged. In other words, it used the canals and locks because it chose to use them. paid the price charged for the service received, and received value for what it paid.

It so happens that the attempted contract by which tolls were charged and paid was not a contract because the agency of the State, namely: the Board, was not authorized by the State to charge the toll in question. Presumably as soon as this was called to the attention of the Legislature possibly by the suit of plaintiff's in this case the Legislature corrected the defect and gave the Board ample

power to charge toll in the future, and also ratified the action of the Board in assuming to charge toll in the past. That this act is a valid exercise of legislative power seems clear, both on principle and authority. On the prior writ of error we held that "the Board of Commissioners of Everglades Drainage District is a public quasi corporation, and as such a governmental agency of the State for certain definite purposes, having such authority only as is delegated to it by law." We there held that the Board had been granted no power to charge toll, therefore it had no power. In other words, the agent of the State acted in the name of the State without authority. The Act in question not only conferred the authority for such action in the future, but ratified the unauthorized acts of the past. That such ratification was not inhibited by the Constitution is settled by the case of United States vs. Heinszen & Co., 206 U. S. 370, 51 L. Ed. 1098, 27 Sup. Ct. Rep. 742.

In this case it appears that duties had been illegally collected upon shipments of goods to and from the Philippine Islands and Porto Rico for a number of years following the Spanish-American War under an order of the President, which order was held to be without power and the duties so collected held to be unauthorized in several cases then and previously pending before the Federal Courts. After the courts had held such duties to be unauthorized Congress passed a law ratifying and validating the same and enacting a tariff for the said Islands. Mr. Justice White (now Chief Justice) disposed of the contentions made against the law by holding that the agents of the government had simply acted beyond their authority in making the collection, and that Congress had the power to ratify such acts, even after it had been judicially determined that the power did not exist and that the claimants might recover, the sums so paid. This opinion quotes from Kent in his commentaries, volume 2, page 415, as follows: "The legal rights affected in those cases by the statutes were deemed to have been vested subject to the equity existing against them, and which the statutes recognized and enforced." Under this quotation is cited a number of authorities, including, Goshen vs. Stonington, **supra.** See also, Hamilton vs. Dillon, 21 Wall. (U. S.) 73, 22, Law. Ed. 528; Mattingly vs. District of Columbia, 97 U. S. 687, 24 L. Ed. 1098; Town of Bellevue vs. Peacock, 89 Ky. 495, 12 S. W. Rep. 1042, 25 Am. St. Rep. 552; Nottage vs. City of Portland, 35 Ore. 539, 58 Pac. Rep. 883, 76 Am. St. Rep. 513. The following decisions of this

Court are also helpful: Taylor vs. Tennessee & Florida Land & Investment Co., 71 Fla. 651, 72 South. Rep. 206; Cranor vs. Volusia County Com'rs. 54 Fla. 526, 45 South. Rep. 455; Givens vs. Hillsborough County, 46 Fla. 502, 35 South. Rep. 88; 82 South. Rep. 770.

It should be said that the various decisions legalizing the obligations of counties and other political subdivisions of the State, or public corporations, or public quasi corporations, while persuasive, are not decisive of the question here involved, because in such instances the State is dealing principally with its own rights, or rights of its governmental subdivision, and we have not overlooked the contention of counsel for the Boat Line that a right of action having accrued in its favor has become vested and cannot be divested. The authorities stated relating to the question of vested rights and the divesting of rights fully cover this contention. It will be noted that the argument, if sound, would give more than a right of action. It would give a right of recovery. This is not a case of tort, nor otherwise of unliquidated damages. It is an effort to recover definite sums of money paid out, and if it be conceded that the Boat Line has a vested right of action, then it would have a vested right of recovery, because the action involves the recovery of the fixed sum about which there is no contention or dispute.

For the reasons stated, the judgment is reversed.

TAYLOR, WHITFIELD & ELLIS.

J. J. Concur.

BROWNE, C. J. Dissents.

WEST, J. Disqualified.

AND, on the said 10th day of July, A. D., 1920, the following judgment was entered in said cause by the Supreme Court of Florida, to-wit:

IN THE SUPREME COURT OF FLORIDA, JUNE TERM, A. D., 1920.
SATURDAY, JULY 10, 1920.

Board of Everglades Drainage District, a Corporation, Plaintiff in Error. vs. Forbes Pioneer Boat Line, a Corporation, Defendant in Error.	Writ of Error to a Judgment of the Circuit Court Within and for the County of Dade.

This cause having heretofore been submitted ot the court upon the transcript of the record of the judgment aforesaid. and argument of counsel for the respective parties, and the record having been seen and inspected. and the court being now advised of its judgment to be given in the premises, it seems to the court that there is error in the said judgment; it is, therefore, considered, ordered and adjudged by the court that the said judgment of the Circuit Court be, and the same is hereby reversed; and it is further ordered by the court that the plaintiff in error do have and recover of and from the defendant in error its costs by it in this behalf expended, which costs are taxed at the sum of $....., all of which is ordered to be certified to the court below.

STATE OF FLORIDA
ss.
COUNTY OF LEON.

I, G. T. WHITFIELD, Clerk of the Supreme Court of the State of Florida, do hereby certify that the foregoing pages numbered from 1 to 39, inclusive, contain true and correct copies of the records filed and the proceedings had in the Supreme Court of the State of Florida in the case of

Board of Commissioners of Everglades
Drainage District, a Corporation,
Plaintiff in Error,

vs.

Forbes Pioneer Boat Line, a Corporation,
Defendant in Error.

and of the opinion and decision of the said Supreme Court filed in said case on the 10th day of July, A. D., 1920, and of the judgment of the said court entered therein on said 10th day of July, A. D., 1920, as the same appear from the originals now on file and of record in my office as Clerk of the Supreme Court of the State of Florida.

WITNESS MY HAND and the Seal of said Supreme Court at Tallahassee, the Capital of the State, this 10th day of September, A. D., 1920.

G. T. WHITFIELD,
Clerk Supreme Court, State of Florida.

(SP. CT SEAL)

AND THEREAFTER, TO-WIT: on the 14th day of August A. D., 1920 came the plaintiff in error Forbes Pioneer Boat Line, a Corporation, by their attorneys and filed in the said Supreme Court of Florida a petition for a writ of error from the Supreme Court of the United States, which original petition, with the allowance thereof by the Chief Justice of said Supreme Court of Florida, are herewith incorporated and made a part hereof. verified copy of same having been retained in the files of the Supreme Court of Florida, to-wit:

IN THE SUPREME COURT
OF THE STATE OF FLORIDA

Board of Commissioners of Everglades Drainage District, a Corporation,
Plaintiff in Error.
vs.
Forbes Pioneer Boat Line,
a Corporation,
Defendant in Error.

PETITION FOR WRIT. ASSIGNMENT, AND PRAYER.

Considering itself aggrieved by the final decision of the Supreme Court of Florida in reversing the judgment rendered in its favor by the Circuit Court of Dade County, Florida, in the above entitled cause, defendant in error hereby prays a writ of error from said decision and judgment, to the United States Supreme Court, and an order fixing the amount of supersedeas bond, and the said Forbes Pioneer Boat Line, a Corporation assigns the following errors in the records and proceedings of said case.

The Supreme Court of Florida erred in holding valid that portion of Chapter 7865 of the Laws of Florida for 1919, which attempts to legalize, validate and confirm the collection by the plaintiff in error (the original defendant) from the defendant in error (the original plaintiff) of the tolls sued for in this cause of action.

The Supreme Court of Florida erred in holding that Chapter 7865 of the Acts of Florida for 1919 was valid in so far as the same barred the right of recovery of defendant in error (the original plaintiff) to recover from plaintiff in error (the original defendant) those

tolls collected prior to the passage of said Chapter 7865, Acts of 1919, and which were the subject of said suit.

The Supreme Court of Florida erred in holding that the defendant in error (the original plaintiff) did not have a vested right in and to said tolls which were the subject of said suit, under and by virtue of the decisions of the Supreme Court of the State of Florida in the case of Forbes Pioneer Boat Line vs. Board of Commissioners of Everglades Drainage District, reported in 82 Southern Reporter, 346.

Under the decision of the Supreme Court of Florida in the case of Forbes Pioneer Boat Line vs. Board of Commissioners of Everglades Drainage District, cited in 82 Southern Reporter on page 346, defendant in error (the original plaintiff) had a vested right to recover the tolls theretofore collected and which were the subject of said suit and the decision of the Supreme Court of the State of Florida holding to the contrary was error in that it takes the property of the defendant in error (the original plaintiff), to-wit: the tolls sued for, without due process of law.

The right of the defendant in error (the original plaintiff) to recover the tolls sued for is property, and Chapter 7865 of the Laws of Florida for 1919 is invalid insofar as it attempts to deprive the defendant in error of said property, and the decision of the Supreme Court of the State of Florida, holding said statute valid as to said tolls sued for, takes the said property of the defendant in error (the original plaintiff) without due process of law.

For which error the defendant in error (the original plaintiff), Forbes Pioneer Boat Line, a Corporation, prays that the said judgment of the Supreme Court of the State of Florida, dated the 10th day of July, 1920, be reversed and a judgment rendered in favor of the defendant in error, Forbes Pioneer Boat Line, in said case, and for costs.

CARSON & BOTTS,

Attorneys for Forbes Pioneer Boat Line, a Corporation.

STATE OF FLORIDA, |
ss.
SUPREME COURT, |

Let writ of error issue upon the execution of a bond by the said Forbes Pioneer Boat Line, a Corporation, to the Board of Commis-

sioners of Everglades Drainage District, a corporation, in the sum of Five Hundred Dollars.

August 18, 1920.

JEFFERSON B. BROWNE,
Chief Justice.

AND THEREUPON, TO-WIT, on the 9th day of September, A. D., 1920, the said Forbes Pioneer Boat Line, a corporation, plaintiff in error, filed in the Supreme Court of Florida a bond as required by said allowance of writ of error therein, which bond with its approval by the Chief Justice of the Surpeme Court of Florida is in the words and figures following, to-wit:

KNOW ALL MEN BY THESE PRESENTS, that we, Forbes Pioneer Boat Line, a corporation organized and existing under the laws of the State of Florida, and Maryland Casualty Company, a corporation under the Laws of Maryland, as surety, are held and firmly bound unto the Board of Commissioners of Everglades Drainage District, in the full and just sum of Five Hundred Dollars, to be paid to the said Board of Commissioners of Everglades Drainage District, its successors and assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seal and dated this 31st day of August, in the year of Our Lord, One Thousand Nine Hundred and Twenty.

Whereas, lately at a term of the Supreme Court of Florida in a suit depending in said court, between Forbes Pioneer Boat Line, a corporation, plaintiffs, and Board of Commissioners of Everglades Drainage District, a corporation, defendant, a judgment was rendered against said Forbes Pioneer Boat Line, a corporation, and the said Forbes Pioneer Boat Line having obtained a writ of error and filed a copy thereof in the clerk's office of said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Board of Commissioners of Everglades Drainage District, a corporation,

citing and admonishing it to be and appear at a Supreme Court of the United States, at Washington, D. C., within thirty days from the date thereof.

Now, the condition of the above obligation is such that if the said Forbes Pioneer Boat Line shall prosecute said writ, and answer all damages if they fail to make good their plea, then the above obligation to be void; else to remain in full force and virtue.

FORBES PIONEER BOAT LINE,
a Corporation, (SEAL)
BY FRED BOTTS,
Its Attorney.

MARYLAND CASUALTY COMPANY,
BY J. W. HUMPHREYS,
Its Attorney-in-fact.
BY E. B. KURTZ, (SEAL)
Its Attorney-in-fact.

Signed, sealed and delivered in the presence of:
GLADYS STEPHENS.
MILDRED JOHNSON.

APPROVED: BY
JEFFERSON B. BROWNE,
Chief Justice of the Supreme Court of the State of Florida.

AND THEREUPON, to-wit: on the 6th day of September, A. D., 1920, there was issued in said cause of citation to the said defendant in error, Board of Commissioners of Everglades Drainage District, a corporation, which original citation with the acceptance of service of same by the said defendant in error is herewith incorporated and made a part hereof, verified copy of same having been retained in the files of the Supreme Court of Florida, viz:

UNITED STATES OF AMERICA, ss.

To Board of Commissioners of Everglades Drainage District:

Your are hereby cited and admonished to be and appear at a Su-

preme Court of the United States, at Washington, D. C., within thirty days from the date hereof, pursuant to a writ of error filed in he Clerk's Office of the Supreme Court of the State of Florida, wherein Forbes Pioneer Boat Line, a corporation, is plaintiff in error, and you are defendant in error, to show cause, if any there be, why a judgment rendered against said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Jefferson B. Browne, Chief Justice of the Supreme Court of the State of Florida, this 6th day of September, in the year of Our Lord One Thousand Nine Hundred and Twenty.

JEFFERSON B. BROWNE,
Chief Justice of the Supreme Court of the State of Florida.

Copy the foregoing citation received this 9th day of September, A. D., 1920.

GLENN TERRELL,
Attorney for Defendant in Error.

AND ON, to-wit: the 2nd day of September, A.D., 1920, there was issued in said cause a writ of error to the Supreme Court of the United States, which original writ of error is herewith incorporated and made a part hereof, verified copy of same having been retained in the Supreme Court of Florida, viz:

UNITED STATES OF AMERICA, ss.

The President of the United States of America to the Honorable Chief Justice and Judges of the Supreme Court of the State of Florida, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the Supreme Court before you, or some of you, being the highest court of law or equity in the said State in which a decision could be had in the said suit between Forbes Pioneer Boat Line, a corporation, plaintiff in error, and Board of Commissioners of Everglades Drainage District, a corporation, defend-

ant in error, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties or laws of the United States, and the decision was in favor of their validity; a manifest error hath happened to the great damage of said plaintiff in error, as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same in the said Supreme Court at Washington within thirty days from the date hereof that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Edward D. White, Chief Justice of the Supreme Court of the United States, this 2nd day of September, in the year of our Lord One Thousand Nine Hundred and Twenty.

F. W. MARSH,
Clerk of the District Court of the United States for the
Northern District of Florida.

(SEAL)

By MIRIAM CHOATE,
Deputy Clerk.

AND THEREUFON, to-wit: on the 2nd day of September, A. D., 1920, the attorneys for the aforementioned plaintiffs in error therein filed in said Supreme Court of Florida a praecipé, giving directions to the Clerk of said Court for making up transcript of the record, and his return in said cause to the Supreme Court of the United States, which praecipe is in the words and figures following:

IN THE SUPREME COURT
OF THE STATE OF FLORIDA

Forbes Pioneer Boat Line, a Corporation, Plaintiff in Error, vs. Board of Commissioners of Everglades Drainage District, a Corporation, Defendant in Error.	DIRECTIONS TO CLERK FOR PREPARING TRANSCRIPT

The clerk of the above court will, beginning on the ..... day of ....., 1920, proceed to prepare transcript of the record and proceedings in this cause, and will copy in full the papers herein after designated to be copied in full and recite all papers hereinafter designated to be recited, as follows:

1. Copy in full Transcript of the Record of the former appeal, in which the decision of the Supreme Court was rendered.

2. Copy in full Opinion of the Supreme Court.

3. Copy in full Judgment of the Supreme Court.

4. Copy in full Petition for Writ of Error, with order allowing same.

5. Copy in full Bond, with order approving the same.

6. Copy in full Citation.

7. Copy in full Writ of Error.

8. Copy in full these Directions to Clerk for Preparing Transcript.

9. You will omit all other papers and proceedings not directed to be included herein.

You will give the date of filing of each and every paper recited or copied in full.

CARSON & BOTTS,
Attorneys for Plaintiff in Error.

Received a copy of the foregoing Directions to Clerk for Pre-

paring Transcript, and service thereof accepted, this 2nd day of September, 1920.

GLENN TERRELL,
Attorney for Defendant in Error.

UNITED STATES OF AMERICA,
SUPREME COURT OF FLORIDA.

In obedience to the commands of the within writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the complete records and proceedings in the within entitled cause, with all things concerning the same; and I further certify that the foregoing pages numbered from 41 to 55, inclusive, contain copies of the original petition for writ of error, with assignments of error, and allowance thereof, copy of writ of error bond, copy of the original citation together with acceptance of service thereof; copy of original writ of error and copy of directions to the clerk for making up transcript of record, with receipt of attorneys for defendant in error for a copy of such directions to the clerk.

And I further certify that the original writ of error bond and copies of the original petition for writ of error, original writ of error and original citation are now on file in my office as clerk of the Supreme Court of the State of Florida.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the Seal of said Supreme Court of Florida in the City of Tallahassee, the Capital, this 11th day of September, A. D., 1920.

J. T. Whitfield

Clerk Supreme Court, State of Florida.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921.

No. 188.

FORBES PIONEER BOAT LINE, PLAINTIFF IN ERROR,

vs.

BOARD OF COMMISSIONERS OF EVERGLADES DRAINAGE DISTRICT, DEFENDANT IN ERROR.

IN ERROR TO THE SUPREME COURT OF THE STATE OF FLORIDA.

BRIEF FOR PLAINTIFF IN ERROR.

JAMES M. CARSON,
Attorney for Plaintiff in Error.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921.

No. 188.

FORBES PIONEER BOAT LINE, PLAINTIFF IN ERROR,

vs.

BOARD OF COMMISSIONERS OF EVERGLADES DRAINAGE DISTRICT, DEFENDANT IN ERROR.

IN ERROR TO THE SUPREME COURT OF THE STATE OF FLORIDA.

BRIEF FOR PLAINTIFF IN ERROR.

Statement.

This cause is before this court on writ of error from the Supreme Court of the State of Florida The assignments of error raise a single question with a double aspect. That question is whether or not chapter 7865 of the Laws of Florida for 1919 is in violation of the Constitution of the United States either (*a*) as impairing the obligation of a contract or (*b*) as depriving the plaintiff in error of its property without due process of law.

Action was brought by the plaintiff in error, as original plaintiff, in the Circuit Court of Dade County, Florida, in June of 1917, for the purpose of collecting from the defendant in error, the original defendant, the Board of Commissioners of Everglades Drainage District, certain tolls which had been paid by the plaintiff, hereinafter called the Boat Line, or plaintiff, to the defendant, hereinafter called the Board or defendant, from the years 1913 to 1916, inclusive, for the passage of the boats of the Boat Line through the canals and locks constructed and maintained by the Board.

The basis of the action was that the tolls were wrongfully and unlawfully demanded and collected because the Board was without power under its charter or the act of its creation to demand or receive tolls for the passage of boats through its canals or locks.

The Board interposed a demurrer to the declaration, which demurrer was by the trial judge sustained; the Boat Line declined to amend or to plead further and final judgment was entered in favor of the Board.

From that judgment the Boat Line, by writ of error, carried the case to the Supreme Court of Florida. That court, in an exhaustive opinion by Gibbs, circuit judge, who sat in place of Mr. Justice West, who was disqualified by reason of having been Attorney General of the State and having represented the Board in this suit, reversed the judgment of the circuit court and held that the Board was without power to collect the tolls, and that they were wrongfully and unlawfully demanded and collected, and that the plaintiff, the Boat Line, was entitled to recover from the Board.

Forbes Pioneer Boat Line *vs.* Board of Commissioners of Everglades Drainage District, 77 Fla., 642; 82 Sou., 346.

On the very day the opinion was handed down the Legislature of Florida passed chapter 7865 (which is the statute the validity of which is here questioned), which statute authorized the collection of tolls for the use of the canals and locks in the Everglades, and by its terms ratified and validated the collection of tolls by the Board theretofore.

The circuit court sustained the demurrer to the plea; the cuit Court of Dade County, the Board pleaded this statute in bar of the action. The Boat Line demurred to the plea on the two grounds that the statute was in violation of the Constitution of the State of Florida and that it was in violation of the Constitution of the United States.

The circuit court sustained the demurrer to the plea; the Board declined to plead further, and a stipulation between counsel for the Boat Line and counsel for the Board was filed, fixing the amount paid as tolls during the period covered by the declaration.

Final judgment in favor of the Boat Line and against the Board was on January 19, 1920, entered by the circuit court. From that judgment the Board, by writ of error, carried the case to the Supreme Court of the State of Florida. The sole question presented to that court was the validity of chapter 7865.

On July 10, 1920, the Supreme Court, in an opinion by Reaves, circuit judge of the Manatee circuit, to whom the record had been sent by the Supreme Court in accordance with the foolish act of the Legislature of Florida authorizing that procedure, again reversed the judgment of the circuit court and held, as will appear from the opinion which is in the record, that chapter 7865 was a valid statute and was a

complete bar to the right of the Boat Line to recover from the Board.

> Board of Commissioners of Everglades Drainage District *vs.* Forbes Pioneer Boat Line, 80 Fla., 252; 86 Sou., 199.

The chief justice dissented from the decision and opinion of the court and thereafter issued writ of error returnable to this court. The assignments of error in this court raise the single question of the validity of chapter 7865, with the double aspect referred to, so that the validity of that statute is now squarely before this court, and the only question for its decision is whether chapter 7865 of the Laws of Florida passed in 1919 is unconstitutional and void as in conflict with the Constitution of the United States.

ARGUMENT.

It is contended here that chapter 7865 is unconstitutional and void in that (*a*) it is in violation of section 10 of article 1 of the Constitution of the United States, as impairing the obligation of a contract, and (*b*) it is violation of that part of the 14th Amendment which inhibits the passage by any State of any law depriving a citizen of his property without due process of law.

The decision of the Supreme Court of Florida, in its first opinion, upheld the right of the Boat Line to recover the tolls paid by virtue of an implied contract on the part of the Board to repay the moneys collected, the contract being analogous to the contract known at common law and enforced in an action of assumpsit under that one of the com-

mon counts which is ordinarily referred to as the count for money had and received.

This court, after the adoption of the 14th Amendment, held directly that contracts implied by law from the conduct of the parties cannot, by the action of any State Legislature, have their obligation impaired any more than the States are authorized to impair the obligation of the contract embodied in a promissory note.

> Fisk *vs.* Jefferson Police Jury, 116 United States, 131, text, page 134.

In that case the court distinguishes a contract implied by law from the conduct of the parties from the question involved in Louisiana *vs.* The Mayor of New Orleans, 109 United States, 285, relied upon by Judge Reaves in his remarkable opinion.

In the New Orleans case the obligation was not in any sense a contractual obligation, but was founded upon a right of action for damages created by a statute of the State of Louisiana, a right that had never before existed, created by the force of operation of the law itself, not in any sense dependent upon the conduct of the parties.

The distinction seems to be between a *contract implied* by law and a *liability created* by law.

The same distinction is recognized by this court in the case of Freeland *vs.* Williams, 131 U. S., 405. The law recognizes all sorts of liabilities not arising from contract, but in this particular case, as in the Fisk case, the liability recognized by law is a contractual obligation and the liability of the defendant to pay to the plaintiff the money it has collected rests upon the agreement implied by law to repay money had and received for the use of another.

This court has held, also, that all laws existing at the time a contract is made are part of the contract.

Von Hoffman *vs.* Quincy, 4 Wallace, 535.

So it is submitted that under the decisions of this court the statute is clearly unconstitutional and void and has violated section 10 of article 1 of the Constitution of the United States.

Due Process of Law.

The next question is much more serious and, in our judgment, much more conclusive against the validity of the statute.

The Supreme Court of Florida held in the first opinion, not only that the plaintiff had a right of action, but that it had a right to recover the money paid by it to the defendant.

The Legislature of the State by an arbitrary act, attempted to extinguish not only the remedy of the plaintiff, but its very right to the money which the Supreme Court of the State had held belonged to it.

The opinion of Judge Reaves is filled with contradictory reasoning. In the first place, in spite of the decision in the first opinion of the Supreme Court, Judge Reaves infers that the payments were voluntarily made. In the second place, he bases much of his reasoning upon the proposition that no man can have a vested right to do wrong. In the third place, he says that there was at all time a moral obligation resting upon the plaintiff to pay these tolls even though the defendant was without power to demand them or collect them. After all these opinions and conclusions, which are not based on anything in the record or in the law, he relies solely upon the case of

United States *vs.* Heinszen, 206 United States, 370.

The case just cited will be referred to hereafter as the Philippine Tariff case.

The court held that tariffs collected in the Philippine Islands under a Presidential proclamation (though the President was without authority to make such a proclamation) could not be recovered after Congress had passed an act validating and ratifying the act of the President in issuing the proclamation and the acts of the collectors in collecting the duty.

This case was followed by this court in Rafferty *vs.* Smith, Bell & Company, found in the Advance Opinions for January 1, 1922, on page 96.

Neither of the cases, however, has any application to the situation presented by the case now before the court.

There are at least four clear and valid distinctions to be drawn:

(1) In the Philippine Tariff case the validity of the collection of a tax was involved; in this case unlawful collection of tolls for the use of canals and locks.

The courts have often held that the acts of the agent of a sovereign government in the collection of taxes may be validated. They have never held that a debt may be canceled by legislation.

(2) The insular possessions of the United States never have stood and never can stand in the same relation to the Federal Government as the governments of the several States. The sovereignty of Congress is very much more certain and more full over these insular possessions, very much less subject to be called into question than its sovereignty over the mainland of the United States or than the sovereignty of

the Legislatures of the several States over the persons and properties of those within their borders. This difference was clearly recognized by this court in all of the Insular Tariff cases.

(3) Neither the clause in the Constitution forbidding any State to pass any law impairing the obligation of any contract, nor the clause in the Fourteenth Amendment forbidding any State to pass any law depriving any person of his property without due process of law is directed at Congress, but both clauses only prohibit such legislation by the several States.

In Evans, Snider Buel Company *vs.* McFadden, 105 Federal, 293, which was affirmed by this Court in McFadden *vs.* Evans, Snider Buel Company, 185 U. S., 505 (the opinion by this court approving the opinion of the circuit court of appeals), we find this language used by the circuit court of appeals:

> "The inhibition against the exercise of such a power which is contained in section 10, article 1, of the Federal Constitution is not addressed to the national Legislature, but to the Legislatures of the several States."

See also Mitchell vs. Clark, 110 U. S., 633, text, 643.

(4) The fourth distinction is ably set out by Mr. Justice Harlan in his concurring opinion in the Philippine Tariff case.

No man has a *right* to sue the United States. To recognize such right would be to deny the sovereignty of the Federal Government.

Since there is no *right*, but only a *privilege* granted by Congress to sue the Federal Government under certain circumstances, it follows that, being a privilege, it may at any time be withdrawn, and that since there is only a privilege and not a right no vested property rights accrue.

If this were a case where the Boat Line was suing the State of Florida itself under some similar privilege granted by the State Legislature, and that privilege should have been withdrawn by the body granting it, there would be no question of the taking away of property rights, and therefore no question as to the constitutionality of the statute.

That is not the case here presented, however, since chapter 7865 consists merely of an enlargement of the powers of the Board which is the defendant herein, coupled with an attempt by the Legislature to cancel a debt owed by it.

For all of which reasons it is submitted that the Philippine Tariff case has no applicability whatever to the case at bar.

Was This a Vested Right?

It has been repeatedly held, and no citation of authority is needed to sustain the proposition, that a right to sue is a vested right and is property and comes within the protection of the Due Process clause, just as any other property.

In this case there was more than a right to *sue*, because the first opinion of the Supreme Court of Florida upheld the right of the plaintiff to *recover*. That is to say, the defendant owed the plaintiff the money sued for and the Supreme Court of Florida had so held when chapter 7865 of the Laws of Florida was passed.

Therefore that act of the Legislature of Florida amounted to an attempt to cancel a debt. It went to the fundamental rights of the plaintiff and not merely to the *remedy*.

There is authority cited in Judge Reaves' opinion, and also in the brief of counsel for defendant in error, to the effect that no man can have a vested right to do wrong.

Judge Reaves also attempts to show that there was a moral obligation upon the part of plaintiff to pay these tolls, notwithstanding their collection was utterly unlawful.

As answering that moral proposition, see the opinion of Mr. Justice Taney in Perrine *vs.* Chesapeake & Delaware Canal Company, 8 Howard, text, 185, in which it is said that a power to collect tolls is so injurious to the public that it ought not and cannot be exercised unless conferred in the clearest of terms; so that in the opinion of this court the *moral* obligation is all the other way.

The language of some courts to the effect that "no man can have a vested right to do wrong" has been rather carelessly used by the courts themselves and has been in this case sadly misapplied by Judge Reaves.

The true distinction, as pointed out by Mr. Justice Holmes when chief justice of the Supreme Court of Massachusetts, in Danforth *vs.* Groton Water Company, 178 Massachusetts, 472, is that the courts have not allowed legislation which merely goes to technical defenses and remedies to cancel or annihilate just obligations or debts.

It is believed that no case has been or can be cited in which such language was used by any court in upholding legislation canceling a debt.

Reasoning of the Supreme Court of Florida.

There is much inconsistency in the reasoning of the Supreme Court of Florida in the two opinions rendered by it in this case. In the second many presumptions, suppositions,

or inferences not justified by the record are indulged, all of which it seems to us are fully answered heretofore.

In the second opinion the court indulges the presumption that the payments were voluntarily made, while in the first opinion it held that the declaration sufficiently showed that they were made involuntarily.

In the second opinion it held that some sort of moral obligation upon the part of the plaintiff to pay the tolls was involved, while in the first opinion it held that the Board was utterly without power to collect them, and that they were therefore wrongfully and unlawfully collected.

In the first opinion it held that the plaintiff had a vested right to the recovery of the tolls, and that the Board had acted wrongfully in collecting them; in the second opinion we find suggestions, not that the Board had acted wrongfully in collecting the toll, but that the plaintiff had acted wrongfully in seeking to collect the debt owed it by the Board.

Evidently the court meant to say that the plaintiff could have no vested right to do wrong, but that the Board did have such a right.

In the latter part of the second opinion of the Supreme Court of Florida it is recognized that statutes validating the levy and collection of taxes and assessments have no applicability here, but the court rests its whole opinion on the Philippine Tariff case, and I presume must have forgotten that a tariff is a tax, so that the case cited fell within the class of cases which the court itself admitted were not applicable.

Another inference indulged in by the court, and not at all justified by the record, was that the Boat Line must have found the business of operating boats through the canal profit-

able, and that it was at the date of the opinion still engaged in that business.

If any inference with reference to that were warranted by the record, the fact that the last of the tolls sued for was paid a year before the institution of suit would warrant the presumption that the tolls had rendered the business of the plaintiff so unprofitable that it had been forced to discontinue its operations on July 1, 1916, but neither inference nor presumption is warranted, because this is a straight suit for the collection of a debt created by the unlawful collection of tolls.

In an attempt to dispose of our argument by *reductio ad absurdum*, Judge Reaves has fallen into his own pit. He says that if the plaintiff had a right to sue it had a right to recover. This is precisely our contention, and it was so held by the Supreme Court of Florida in its first opinion. Whether or not a right to sue is a vested right may or may not be an open question, but certainly a right to recover money is a vested right and is property and cannot be defeated by mere legislative enactment.

We have left entirely out of account so far the decisions of the Supreme Court of Florida to the effect that navigable waterways are public highways and as such are entitled to use by the public, any member of which who suffers special injury can by injunction prevent their obstruction.

Bucki *vs.* Cone, 25 Florida, page 1.

Under that decision the Board was not only legally but morally wrong, because it was interfering with the use of a public highway.

Summary.

It is therefore submitted that chapter 7865 of the Laws of Florida impairs the obligation of the contract implied by law upon the part of the Board to repay to the plaintiff money had and received by the Board for the use of the plaintiff, and that the Legislature of Florida attempted by the passage of this act to cancel and extinguish the debt owed by the Board without any process of law whatever, and that for these reasons the statute is unconstitutional and void, and that the plaintiff is entitled to recover, and that the judgment of the Supreme Court of Florida ought to be reversed.

Respectfully submitted,

JAMES M. CARSON,
Attorney for Plaintiff in Error.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921.

No. 188.

FORBES PIONEER BOAT LINE, PLAINTIFF IN ERROR,

vs.

BOARD OF COMMISSIONERS OF EVERGLADES DRAINAGE DISTRICT.

BRIEF FOR DEFENDANT IN ERROR.

WILLIAM GLENN TERRELL,
Counsel for Defendant in Error.

(28,012)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921.

No. 188.

FORBES PIONEER BOAT LINE, PLAINTIFF IN ERROR,

vs.

BOARD OF COMMISSIONERS OF EVERGLADES DRAINAGE DISTRICT, DEFENDANT IN ERROR.

IN ERROR TO THE SUPREME COURT OF THE STATE OF FLORIDA.

BRIEF OF DEFENDANT IN ERROR.

Statement.

This cause was originally brought in the Circuit Court of Dade County, Florida, in the spring of 1917, the plaintiff claiming damages against the defendant for the collection of tolls from the paintiff for the use of certain canals and locks within the Everglades Drainage District of Florida for navigation purposes.

The defendant filed a demurrer to the plaintiff's declara-

tion which, on argument by counsel for both parties, was sustained by the judge of the circuit court. On appeal to the Supreme Court of Florida from the said order the judgment of the circuit court was reversed on the ground that there was no statutory authority authorizing the defendant to collect such tolls (77 Fla., 642; 82 Sou., 346).

On the same date that this opinion of the Supreme Court was rendered reversing the order of the Circuit Court of Dade County the Legislature enacted chapter 7865 of the Acts of 1919, Laws of Florida, which in effect amended section 3 of chapter 6456 of the Acts of 1913, Laws of Florida, defining the powers and duties of the Board of Commissioners of Everglades Drainage District, defendant in error here, and authorizing the said defendant in error to provide for and promulgate a reasonable system of tolls for the use of the locks and canals of the defendant in error and the legalizing of tolls previously collected. This act was signed by the Governor the 9th day of June, A. D. 1919, and from thenceforth became a valid and binding law of the State of Florida.

The mandate of the Supreme Court of Florida went down on or about the 1st day of July, A. D. 1919, and the judge of the Circuit Court of Dade County issued his order in compliance therewith, giving the defendant until the rule day in October, A. D. 1919, to plead to the declaration of the plaintiff, in keeping with which order the defendant entered his plea and motion to dismiss.

The plea and motion to dismiss were submitted to the court by the counsel for both parties to this cause, and on due consideration the plea was overruled and motion to dismiss was denied and plaintiff given until the rule day in January, 1920, to plead further to the declaration.

The defendant, or defendant in error here, declining to plead further, the court on the 19th day of January, 1920, entered its judgment against the defendant in error for the sum of six hundred and forty-nine dollars and twenty-one cents principal, one hundred and eighty-four dollars and forty-nine cents, interest, and seventeen dollars and thirty-five cents costs, from which order, denying the plea and motion to dismiss and entering final judgment, as above, writ of error was again taken to the Supreme Court of Florida.

The Supreme Court of Florida again reversed the judgment of the Circuit Court of Dade County, from which order of reversal writ of error is taken to this court (Board of Commissioners of Everglades Drainage District *v.* Forbes Pioneer Boat Line, 80 Fla., 252; 86 Sou., 199).

ARGUMENT.

Plea.

The plea of the defendant in error set up chapter 7865 of the Acts of 1919, Laws of Florida, as a full and complete defense to the allegations contained in the Declaration of the plaintiff in error.

Section 1 of chapter 7865, which was pleaded as such defense, fully defines the powers of the Board of Commissioners of Everglades Drainage District, the defendant in error, and is as follows:

> "SECTION 1. That section 3 of chapter 6456, Acts of 1913, Laws of Florida, be and the same is hereby amended to read as follows:

SEC. 3. The said board is hereby authorized to establish and construct a system of canals, drains, levees, dikes, dams, locks, and reservoirs of such dimensions, depth and proportions as in the judgment of the said board is deemed advisable to drain and reclaim the lands within said drainage district, and to maintain such canals, drains levees, dikes, dams, locks and reservoirs in such manner as said board shall deem most advantageous, and to carry out such works as in the judgment of the said board will be advisable for harmonizing such navigation as may be incidental upon the works of drainage, or in connection with the works constructed for drainage purposes; to provide for and regulate the collection of a reasonable schedule of tolls for the use of the said canals and locks, all tolls heretofore collected for the use thereof being by this Act legalized and validated; to regulate the speed of all water craft or boats of any kind plying on or using the said canals and waterways; to prescribe regulations for the construction of docks and landings along, and bridges or ferries across, the said canals; and to do and perform any and all other acts which in the judgment of the said board are conducive to the upkeep and betterment of the same. Said board is hereby authorized and empowered to clean out, straighten, widen, change the course and flow, alter or deepen any ditch, drain, river, water course, pond lake, creek, or natural stream in or out of said district that may be deemed necessary by said board to be done to facilitate the drainage and reclamation of the territory in said district; to construct and maintain main and lateral canals or ditches; to construct such levees, dikes, sluices, revetments, reservoirs, pumping stations and other works and improvements deemed necessary to preserve and maintain the works in said district; to construct any bridge or roadway over any levees, embankments,

> public highways, railroad rights of way, track, grade, fill or cut, or across any stream or pond that may be necessary to facilitate the work of draining and reclaiming the territory or any part thereof embraced in said district; said board shall have the power and authority to hold, control and acquire by donation or purchase for the use of the district any real or personal property, to condemn any lands, easement, railroad right of way, in or out of said district, for a right of way for any canal, ditch, drain or reservoir, or for material to be used in constructing and maintaining said works and improvements, for draining, protecting and reclaiming the lands in said district."

Whether the act as above was a full and complete defense to the allegations as contained in plaintiff's declaration we think depends on the following propositions:

1. Can the Legislature authorize the collection of a reasonable system of tolls on the canals and locks of the defendant?

2. Is it within the power of the Legislature to legalize and validate tolls heretofore collected for the use of such locks and canals?

The rule of law which we think is an answer to the inquiries as above propounded was well stated by our Supreme Court in Cranner *v.* Board of County Commissioners of Volusia County, 54 Florida, 526; 45 Southern, 455, wherein the court, among other things, said:

> "Where a bill filed to restrain and enjoin the execution of a contract made by a county for the construction of hard surfaced public roads alleges illegalities and irregularities against such contract in

> respect only of matters and features connected therewith that the Legislature had the power to dispense with in the first instance, an act passed by the Legislature subsequent to the making of such contract, ratifying, validating and approving it, purges it of all such alleged illegalities and irregularities, and such bill should be dismissed upon the passage of such validating act, though it had been filed prior to its enactment."

In Crannor *v.* Board of County Commissioners of Volusia County, *supra*, the court was passing upon the validity of an act of the Legislature ratifying and validating or confirming the acts of the Board of County Commissioners of Volusia County, Florida, relative to the laying out, grading, constructing, and repairing of hard-surfaced roads within the said county. The reasons for which act were that the said Board of County Commissioners had surpassed its authority in such construction.

In Givens *v.* Hillsborough County, 46 Florida, 502; 35 Southern, 88; 110 American State Reports, 104, the Supreme Court of Florida had under consideration an act of the Legislature legalizing certain acts of the Board of County Commissioners of Hillsborough County, wherein the said board had superseded its authority in the matter of issuing bonds for hard surfaced roads in said county, and among other things, the court said:

> "The Legislature has power by a curative act to authorize the issuance of county bonds, notwithstanding the failure by the county to comply with some provision of the statute regulating the issue of such bonds, if the provision violated is one which could have been dispensed with in the enactment of the original statute."

In Utter *v.* Franklin, 172 United States, 416, the Supreme Court of the United States had under consideration acts of Congress and the Territory of Arizona very similar to the acts of the Legislature of Florida as above referred to, wherein, among other things, the court said:

> "The fact that this court has held the original Pima County bonds invalid does not affect the question. They were invalid because there was no power to issue them. They were made valid by such power being subsequently given, which makes no possible difference that they had been declared to be void under the power originally given. The judgment in that case was *res adjudicata* only of the issues then presented of the facts as they then appeared and of the Legislature then existing."

It might be stated further that the foregoing decisions affecting bond issues gave life and vitality thereto where they had previously been declared invalid by reason of illegalities and irregularities in their issue, but were subsequently validated by acts similar in character to chapter 7865, as above.

Further speaking on the question of validating acts and the authority of the Legislature in the premises, the Supreme Court of Minnesota, in State *v.* Torinus, 26 Minnesota, 1, said:

> "It was competent however for the State as principal to make it good by legislative enactment, adopting it as its own, for it could have authorized it in the first instance, and whatever it can do or direct to be done originally it can subsequently do, and when done, lawfully ratify and adopt with the same effect as though it had been properly done under a previous authority."

We think that the rule as above outlined in State *v.* Torinus, has been the rule universally followed and adhered to in this country, and since there is no provision of organic or statutory law regulating the power of the Legislature in the premises, we think that there can be no question but that the Legislature could have, in the first instance, authorized the collection of the tolls now in question.

The following cases support this view:

Everglades Sugar & Land Company *v.* Napoleon B. Broward Drainage District, 78 Fla., 275; 82 Sou., 815.

Norton *v.* Shelby County, 118 U. S., 425.

Wilson *v.* Dame, 58 N. H., 392.

Williams *v.* Butler, 35 Ill., 544.

Ind. R. R. Co. *v.* Morris, 67 Ill., 295.

Pollack *v.* Cohen, 32 Ohio State, 514.

Sentell *v.* Canady, 29 La., 679.

McCrackin *v.* San Francisco, 16 Calif., 591.

The Right to Sue a Vested Right.

Plaintiff in error takes the position that his right of action in this case is a vested right which could not be taken away by chapter 7865 of the Acts of 1919 of the Laws of Florida, the same being passed after this suit was instituted.

We do not accept his premise or do we agree with him in his conclusion, and while I think every question discussed by the plaintiff in error in his brief is fully answered in the previous pages of this brief, it seems proper to submit the law as we understand it setting forth what we conceive to be vested rights, what a vested right of action is as applied to this cause.

in Cooley's Constitutional Limitations, seventh edition, on page 511, on the question of vested rights, we have the following:

> "It would seem that a right cannot be considered a vested right unless it is something more than such a mere expectation as may be based upon an anticipated continuance of the present general laws. It must have become a title legal or equitable to the present or future enjoyment of property, or to the present or future enforcement of a demand or a legal exemption of a demand made by another."

In section 294, page 308 of volume 6, Ruling Case Law, we have a lengthy and explicit discussion of the term vested rights, all of which is in line with the view as above expressed by Mr. Cooley.

In volume 12, Corpus Juris, page 955, on the question of vested rights we have the following:

> "Rights are vested when the right to enjoyment, present or prospective, has become the property of some particular person or persons as a present interest. On the other hand a mere expectancy of future benefits or a contingent interest in property founded on anticipated continuance of existing laws does not constitute a vested right."

Bouvier also, Words and Phrases, recites numerous other instructive definitions of the term "Vested Rights" as applied to individual cases, but we think the foregoing is comprehensive and decisive of the meaning of this term and that an analysis of the same is clearly to the effect that possession and present or prospected enjoyment, anything

possessed or enjoyed, are essential to constitute a "Vested Right" and that a vested right of action to be determined as such must be or result in such possession or enjoyment.

Referring then to our original proposition as recited in the early pages of this brief, is it within the power of the Legislature to legalize and validate tolls heretofore collected for the use of such locks and canals? It might be said that this proposition turns on the question of whether or not chapter 7865 of the acts of 1919, Laws of Florida, is *ex post facto* or retroactive or retrospective.

Plaintiff in error seems to infer that the act as above is an *ex post facto* law, while our contention is that it is retroactive or retrospective, and the courts of this country have recognized such a distinction.

Union County *v.* Kentucky, 219 U. S., 140.

We think further it is well settled that the prohibition against *ex post facto* laws is confined to laws respecting criminal punishment and has no relation to retrospective legislation of any other character.

Johannessen *v.* United States, 225 U. S., 227.
Cooley's Const. Lim. (7th Ed.), 373.

The Constitution of Florida, as cited by plaintiff in error, prohibits the passage of *ex post facto* laws, but contains no inhibition on the passage of retroactive or retrospective laws. The same rule applies to the Constitution of the United States.

The question of whether or not the Legislature is authorized to pass retroactive or retrospective laws is fully answered on page 529 of the seventh edition of "Cooley's Constitutional Limitations" in the following language:

> "There is no doubt of the right of the Legislature to pass statutes which reach back to and change or modify the effect of prior transactions, provided, retrospective laws are not forbidden *eo nomine* by the State Constitution and, provided, further, that no other objection exists to them than their retrospective character."

As to the scope and effect of retroactive statutes in "Cooley's Constitutional Limitations," page 531, we have the following rule prescribed:

> "If the thing wanted, or which failed to be done and which constitutes the defect in the proceedings is something the necessity for which the Legislature might have dispensed with by prior statute, then it is not beyond the power of the Legislature to dispense with it by subsequent statute. And if the irregularity consists in doing some act or in the mode or manner of doing some act which the Legislature might have made immaterial by prior law it is equally competent to make the same immaterial by subsequent law."

As applied to the case at bar, this rule resolves itself into the proposition of whether or not the Legislature in the first instance could have authorized the collection of a reasonable schedule of tolls for the use of the canals and locks referred to in this litigation, or whether or not the Legislature could attempt to validate such tolls after the same had been collected.

We think it is elementary and not necessary to argue that the Everglades Drainage District, together with all canals and locks pertaining thereto, being a creature of the Legisla-

ture of Florida, it was certainly competent for its creator to provide a reasonable schedule of tolls for the use thereof and we think it is further fundamental and well settled that the Legislature could validate any tolls heretofore collected for the use of such locks and canals, and that under no theory could plaintiff in error have acquired a vested right in or a vested right of action to recover such tolls heretofore collected unless judgment therefor had been acquired prior to the passage of chapter 7865 as above, if then. In other words, the bringing of a suit vests in no party a right to a particular decision, the theory being that until final decree is entered there is no vested right to be disturbed.

Middleton *v.* St. Augustine, 42 Fla., 287; 29 Sou., 421.

Windsor *v.* Des Moines, 110 Iowa, 175; 81 N. W., 476.

Vol. 6, Ruling Case Law, Paragraphs 311, 333.

Cooley's Constitutional Limitations, *supra*, page 543.

Supporting this view, in Windsor *v.* Des Moines, the court said:

> "The first question for solution relates to the validity and scope of the act and its effect on pending litigation. A curative act may cure or regulate any act which the General Assembly as an original question have authorized. Hull *v.* Cook, 44 Iowa, 641; City of Clinton *v.* Willaker, 98 Iowa, 655; 68 N. W., 431, and cases cited. Yet a large discretion is vested with the Legislature in determining when such special laws shall be passed. Chicago, R. I. & P. Railroad Company *v.* Independent District of Avoca, 99 Iowa, 556; 68 N. W., 881. It is no objection to such legislation that it was passed after action

has commenced disputing the validity of the act. As a rule every case must be determined on the law as it stands at the time judgment is pronounced. Of course the Legislature cannot impair the obligation of contracts nor by subsequent legislation disturb vested rights, but the bringing of a suit vests no right in a particular decision. Huff *v.* Cook, 44 Iowa, 639. This is a suit in equity and is triable *de novo* in this court. Until final decree is passed there is no vested right to be disturbed and the case must be determined on the law as it now stands. These are elementary propositions supported by the following among other authorities: Land Company *v.* Soper, 39 Iowa, 112; Huff *v.* Cook, 44 Iowa, 639; Association *v.* Heidt, 77 N. W., 1052; 43 L. R. A., 689; Same *v.* Curtis, 78 N. W., 208."

We think the principle as annunciated in Windsor *v.* City of Des Moines, *supra,* granting for the sake of argument that the plaintiff in error had a vested right, would settle such right against it as chapter 7865 of the Acts of 1919, Laws of Florida, which was plead as a bar to this claim, became effective June, 1919, while the judgment in question was not entered until January, 1920. The following are also in line:

Watson *v.* Murcer, 8 Pet., 88.
Mather *v.* Chapman, 6 Conn., 54.
People *v.* Supervisors, etc., 20 Mich., 950.
Excelsior Mfg. Co. *v.* Keyser, 62 Miss., 155.
Phœnix Ins. Co. *v.* Pollard, 63 Miss., 641.
McLane *v.* Brown, 70 Iowa, 752; 30 N. W., 478.
Johnson *v.* Richardson, 44 Arkansas, 365.
Dunham *v.* Anders, 38 S. E., 832.

We think the foregoing, in connection with argument and authorities previously recited herein, are conclusive to the

effect that the judgment of the Supreme Court of Florida should be sustained, and that the plea of the act of Legislature of Florida as above referred to is a complete bar to any recovery on the part of the plaintiff in error.

Supporting this view, in Board of Commissioners of Everglades Drainage District *v.* Forbes Pioneer Boat Line, 80 Florida, 252; 86 Southern, 199, the court said:

> "The act in question not only conferred the authority for such action in the future, but ratified the unauthorized acts of the past. That such ratification was not inhibited by the Constitution is settled by the case of The United States *v.* Heinsven & Company, 206 U. S., 370."

A further and perhaps the most recent expression of this court on a similar question is found in James J. Rafferty, as Collector of Internal Revenue for the Philippine Islands, *v.* Smith, Bell & Company, Ltd., *et al.*, Advance Opinions United States Supreme Court, January 1, 1922, page 96.

We think that James J. Rafferty *et al. v.* Smith, Bell & Company, Ltd., *et al.;* United States *v.* Heinszen & Company, and Board of Commissioners of Everglades Drainage District *v.* Forbes Pioneer Boat Line, the last three cases above referred to, are fully determinative of every question raised in this case and settle the same on the side of defendant in error.

We think, therefore, that the judgment of the Supreme Court of Florida should be affirmed.

Respectfully submitted,

WILLIAM GLENN TERRELL,
Attorney for Defendant in Error.

FORBES PIONEER BOAT LINE *v.* BOARD OF COMMISSIONERS OF EVERGLADES DRAINAGE DISTRICT.

ERROR TO THE SUPREME COURT OF THE STATE OF FLORIDA.

No. 188. Argued March 23, 1922.—Decided April 10, 1922.

1. Plaintiff, having been required by the defendant Board to pay charges for passage through a canal lock the use of which was then by law free, its right to recover the amount was protected by the Federal Constitution against destruction by the State, and could not be defeated by an act of the legislature purporting to validate the collection retroactively. P. 339. *United States* v. *Heinszen & Co.*, 206 U. S. 370, a tax case, distinguished.
2. Generally a ratification of an act is not good if attempted when the ratifying authority could not lawfully do the act. P. 339.

80 Fla. 252, reversed.

ERROR to a judgment of the Supreme Court of Florida which reversed a judgment recovered by the present plaintiff in error in its action to recover sums of money it had paid to the defendant Board as tolls for the passage of its boats through locks in one of the canals of a drainage system supervised and controlled by the Board under the state law.

Mr. James M. Carson for plaintiff in error.

Mr. William Glenn Terrell for defendant in error.

MR. JUSTICE HOLMES delivered the opinion of the court.

This is a suit, begun in 1917, to recover tolls unlawfully collected from the plaintiff, the plaintiff in error, for passage through the lock of a canal. The Supreme Court of Florida sustained the declaration, 77 Fla. 742, but on the day of the decision the Legislature passed an act, c. 7865, Acts of 1919, that purported to validate the collection. The act was pleaded. The plaintiff demurred setting up

Article I, § 10, and the Fourteenth Amendment of the Constitution of the United States, but the Supreme Court rendered judgment for the defendant on the ground that the plea was good. 80 Fla. 252.

Stripped of conciliatory phrases the question is whether a state legislature can take away from a private party a right to recover money that is due when the act is passed. The argument that prevailed below was based on the supposed analogy of *United States* v. *Heinszen & Co.*, 206 U. S. 370, (*Rafferty* v. *Smith, Bell & Co.*, 257 U. S. 226,) which held that Congress could ratify the collection of a tax that had been made without authority of law. That analogy, however, fails. A tax may be imposed in respect of past benefits, so that if instead of calling it a ratification Congress had purported to impose the tax for the first time the enactment would have been within its power. *Wagner* v. *Baltimore*, 239 U. S. 207, 216, 217. *Stockdale* v. *Atlantic Insurance Co.*, 20 Wall. 323. But generally ratification of an act is not good if attempted at a time when the ratifying authority could not lawfully do the act. *Bird* v. *Brown*, 4 Exch. 786, 799. If we apply that principle this statute is invalid. For if the Legislature of Florida had attempted to make the plaintiff pay in 1919 for passages through the lock of a canal, that took place before 1917, without any promise of reward, there is nothing in the case as it stands to indicate that it could have done so any more effectively than it could have made a man pay a baker for a gratuitous deposit of rolls.

It is true that the doctrine of ratification has been carried somewhat beyond the point that we indicate, in regard to acts done in the name of the Government by those who assume to represent it. *Tiaco* v. *Forbes*, 228 U. S. 549, 556. It is true also that when rights are asserted on the ground of some slight technical defect or contrary to some strongly prevailing view of justice, Courts have

allowed them to be defeated by subsequent legislation and have used various circumlocutions, some of which are collected in *Danforth* v. *Groton Water Co.*, 178 Mass. 472, 477. *Dunbar* v. *Boston & Providence R. R. Co.*, 181 Mass. 383, 385. In those cases it is suggested that the meaning simply is that constitutional principles must leave some play to the joints of the machine.

But Courts can not go very far against the literal meaning and plain intent of a constitutional text. Defendant owed the plaintiff a definite sum of money that it had extorted from the plaintiff without right. It is hard to find any ground for saying that the promise of the law that the public force shall be at the plaintiff's disposal is less absolute than it is when the claim is for goods sold. Yet no one would say that a claim for goods sold could be abolished without compensation. It would seem from the first decision of the Court below that the transaction was not one for which payment naturally could have been expected. To say that the legislature simply was establishing the situation as both parties knew from the beginning it ought to be would be putting something of a gloss upon the facts. We must assume that the plaintiff went through the canal relying upon its legal rights and it is not to be deprived of them because the Legislature forgot.

Judgment reversed.